

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**THOMAS GOTT**

Claimant

VS.

**OXFORD TRANSPORTATION SERVICE, INC.**

Respondent

AND

**KANSAS TRUCKERS RISK MANAGEMENT  
GROUP**

Insurance Carrier

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Docket No. 223,098

**ORDER**

Claimant appeals the Award of Administrative Law Judge Nelsonna Potts Barnes dated August 17, 1998.

**APPEARANCES**

Claimant appeared by his attorney, Dale V. Slape of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, M. Doug Bell of Coffeyville, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

**ISSUES**

- (1) Did claimant suffer accidental injury arising out of and in the course of his employment with respondent on the dates alleged?
- (2) Did claimant provide timely notice pursuant to K.S.A. 44-520?

- (3) If claimant failed to provide timely notice pursuant to K.S.A. 44-520, was there just cause for claimant's failure to timely notify respondent?
- (4) What is the nature and extent of claimant's injury and/or disability?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Claimant alleges accidental injury from the fall of 1996 through March 27, 1997, his last day of employment with respondent prior to undergoing carpal tunnel surgery on March 28, 1997. Claimant, an over-the-road trucker, developed symptoms in his upper extremities which included numbness and tingling, displayed a positive Tinel's sign and positive EMGs, and was diagnosed with ulnar nerve compression, all on the left side. Claimant also evidenced left C-7 radiculopathy and had some discomfort in the neck.

Respondent counters arguing claimant's symptoms substantially preexisted his employment. Claimant was diagnosed with possible right carpal tunnel syndrome in 1984, and possible left carpal tunnel syndrome and left thumb discomfort in 1989. A review of claimant's medical records, created and maintained by Dr. Tyrone D. Artz, claimant's treating physician, indicated numerous injuries and complaints to claimant's bilateral upper extremities including the shoulders, elbows, and hands and wrists.

Respondent, through the testimony of its regional manager, Alissa Unruh, provided information indicating it was aware of claimant's ongoing physical limitations. Ms. Unruh, however, contradicted claimant's allegations that he provided notice to respondent of his ongoing symptoms and their relationship to his employment. Ms. Unruh testified that claimant advised her his cortisone injections were to treat a condition of brittle bones which claimant had had for many years. She denied claimant ever advised her that his ongoing symptoms were related to his work with respondent.

Claimant, on the other hand, alleges that he told Ms. Unruh on more than one occasion that his symptoms were related to his work. Claimant's testimony, however, directly contradicts itself on several occasions. At the preliminary hearing, he denied advising respondent of the work relationship of his symptoms, and in the same transcript alleged that he advised respondent on more than one occasion that his conditions were being aggravated by his work.

In proceedings under the Workers Compensation Act, the burden of proof shall be upon the claimant to establish claimant's right to an award of compensation by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. See K.S.A. 1996 Supp. 44-501 and K.S.A. 1996 Supp. 44-508(g). Claimant

alleges that he suffered accidental injury while in his employment with respondent. The work described by claimant involves driving, loading and unloading trucks on a regular basis. The work described by claimant included repetitive use of his hands and upper extremities. The Administrative Law Judge found claimant proved accidental injury arising out of and in the course of his employment. The Appeals Board finds the evidence in the record supports said finding and affirms same.

The Administrative Law Judge, however, found claimant failed to prove notice as required by K.S.A. 44-520, which requires notice be given to the respondent within ten days of the date of the accident, providing the time, place, and particulars thereof. If claimant fails to provide notice within the ten days as required, claimant has an opportunity to show just cause as to why claimant failed to notify respondent of the accident which would extend the time limit for providing service to 75 days after the date of accident.

This matter was originally decided after the preliminary hearing of July 8, 1997, when Judge Barnes found claimant had not provided timely notice and had not proven just cause for his failure to so notify respondent under K.S.A. 44-520. This decision was appealed to the Workers Compensation Appeals Board and affirmed by its decision of October 16, 1997.

In her later decision of August 17, 1998, Judge Barnes again found claimant had failed to prove timely notice and just cause as required by the statute. The Appeals Board finds, in reviewing the evidence, that this decision should be affirmed.

While claimant argues that he advised claimant's representative, Alissa Unruh, of his work-related connection to his symptoms, he also contradicts himself on several occasions in the record.

Whether claimant provided notice to respondent in a timely fashion hinges to a large degree upon the claimant's credibility. As claimant testified before the Administrative Law Judge on two separate occasions, the Appeals Board finds some deference should be given to the Administrative Law Judge's conclusions in this case as she had the opportunity to assess claimant's credibility. In finding that claimant failed to provide notice and just cause under K.S.A. 44-520, the Administrative Law Judge assessed claimant's credibility and found it lacking.

The Appeals Board, in reviewing the testimony of claimant and that of Ms. Unruh, concludes the contradictions contained in claimant's testimony cast serious doubt on whether notice was provided to respondent in a timely fashion. Whether there was just cause for claimant's failure to provide notice was raised in claimant's brief, but no argument supporting a finding of just cause was presented. The Appeals Board finds that the Award of the Administrative Law Judge, denying claimant benefits for having failed to prove timely notice or just cause under K.S.A. 44-520, should be affirmed.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated August 17, 1998, should be, and is hereby, affirmed, and an award of compensation is hereby denied the claimant, Thomas Gott, against respondent, Oxford Transportation Service, Inc., and its insurance carrier, Kansas Truckers Risk Management Group, for the injuries alleged.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are assessed against the respondent as follows:

Barber & Associates	
Transcript of preliminary hearing	\$ 281.30
Ireland Court Reporting, Inc.	
Transcript of regular hearing	\$ 163.90
Heather A. Lohmeyer, C.S.R.	
Deposition of Tyrone D. Artz, M.D.	\$ Unknown

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Dale V. Slape, Wichita, KS  
M. Doug Bell, Coffeyville, KS  
Nelsonna Potts Barnes, Administrative Law Judge

**THOMAS GOTT**

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**DOCKET NO. 223,098**

Philip S. Harness, Director